

## FCC MAIL SECTION

ORIGINAL

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 92-47

In the Matter of

Amendment of Section 73.606(b), RM-7929  
Table of Allotments,  
TV Broadcast Stations.  
(Bellingham and Anacortes, Washington)

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: August 4, 1992;

Released: August 25, 1992

By the Chief, Allocations Branch:

1. At the request of Prism Broadcasting Company, Inc. ("petitioner"), permittee of Station KBCB(TV), the Commission has before it the *Notice of Proposed Rule Making*, 7 FCC Rcd 1915 (1992), requesting the reallocation of vacant UHF television Channel 24 in lieu of Channel 64 at Bellingham, Washington, the modification of Station KBCB(TV)'s construction permit accordingly, and the substitution of vacant Channel 64 in lieu of Channel 24 at Anacortes, Washington, to accommodate the substitution at Bellingham. Petitioner filed comments reaffirming its intention to apply for the Bellingham channel, if allotted. Opposing comments were filed by Darlene C. Paglinawan McHenry ("McHenry"). Petitioner filed reply comments.

2. In its comments, McHenry, permittee of Low Power Television ("LPTV") Station K24CX, Channel 24, Anacortes, Washington, states that if the pending application to modify her construction permit to increase power for Station K24CX is approved, she will commence operation of her station. McHenry argues that the proposed channel switch would prevent Station K24CX's modification. McHenry asserts that it has traditionally been the Commission's policy to refuse parties seeking to move from a higher to a lower UHF channel, unless a public interest showing has been demonstrated, citing *Seattle and Tacoma, Washington*, 52 RR 2d 211 (1982). McHenry argues that petitioner has not made such a showing. McHenry claims that petitioner makes a number of "bare bone" allegations in support of its request. McHenry states that petitioner asserts that Canada has indicated it will not accept Channel 64 operating from its present site at more than 1,000 kW effective radiated power ("ERP") toward Canada. However, McHenry argues that petitioner provides no factual support and its engineering statement merely states that the Canadian government is "unlikely" to approve Channel 24 operating at greater than 1,000 kW ERP without limiting ERP toward Vancouver to less than 1,000 kW ERP.

3. Furthermore, McHenry contends that petitioner make no "sustainable" public interest showing in support of its proposal, but instead, it alludes to unnamed "difficult

obstacles" and a need to achieve signal strength parity with other commercial stations in an unidentified market. McHenry claims that there are significant facts which militate against the proposed channel change. She declares that there are alternate sites from which Station KBCB(TV) could operate on Channel 64 without concern for Canadian power restrictions. McHenry proposes two sites which petitioner could operate with full power on Channel 64, or could "likely" operate with maximum facilities of 5,000 kW. In light of these available sites, McHenry concludes that petitioner could select a different site instead of switching channels.

4. In its reply comments, petitioner reiterates that because of the proximity of Station KBCB(TV) to vacant Channel 63, Vancouver, British Columbia, Canadian officials have indicated opposition to the operation of Station KBCB(TV) on Channel 64 at more than 1,000 kW ERP in the direction of Canada. Petitioner claims that operation of Station KBCB(TV) on Channel 24 in lieu of Channel 64 may allow operation of both Station KBCB(TV) and Channel 63 at Vancouver, at increased power without special limits negotiated by international treaties. Thus, petitioner concludes that the public interest would be served by the grant of its petition since Station KBCB(TV) could operate at increased power. Petitioner argues that McHenry's assertion that Channel 64 cannot operate at more than 1,000 kW ERP in the direction of Canada is irrelevant, since Channel 64's ERP is limited by treaty with Canada in all directions.

5. Petitioner refutes McHenry's claim that if Station KBCB(TV) were to operate at 5,000 kW ERP from its present site on Channel 24, very little coverage would be gained because the terrain is rugged and the area is not densely populated. Petitioner states that because of the rugged terrain there is only one television service, and that much of the population within Station KBCB(TV)'s existing coverage area cannot receive its television broadcasts unless it operates at increased power. Petitioner rejects McHenry's claim that the channel switch would cause "unnecessary hardships" because it would displace Station K24CX, Channel 24 at Anacortes. Petitioner notes that the Commission has clearly stated that LPTV service is a secondary service, and that Commission policy would allow McHenry to modify its construction permit for Station K24CX to operate on another available channel if the instant petition is granted. In fact, petitioner claims that several channels are available to Station K24CX for LPTV from its present site. Petitioner declares that no hardships would be imposed since Station K24CX is not presently on the air. Finally, petitioner argues that McHenry's opposition to its petition on the grounds that she intends to apply for a full power Channel 24 allotment at Anacortes after the freeze is lifted is "presumptuous and wholly irrelevant."

6. McHenry correctly states that it has been Commission policy to refuse to assign lower UHF TV channels solely because the interested party desires the lower portion of the UHF band. See *Seattle and Tacoma, Washington*, *supra*. However, where there is a strong public interest reason for doing so, we may approve the substitution of a lower UHF channel. Here, several valid reasons exist for granting petitioner's request. As stated in the *Notice*, the request would allow Station KBCB(TV) to operate at increased power without the need to negotiate special limits by international treaties. Thus, the public interest would be served

by the substitution of Channel 24 in lieu of Channel 64 at Bellingham, since it could provide a significant increase in service to the population within the existing coverage area.

7. McHenry's objection to this proposal on the grounds that it would preclude the modification of its construction permit to increase power for Station K24CX at Anacortes must be rejected. A full service television station takes precedence over a low power television facility. Section 74.702(b) of the Commission's Rules provides that changes in the existing Television Table of Allotments may be made without regard to existing or proposed lower power television stations. Where such changes result in interference to reception of the signal of a full service station, licensees or permittees of the interfering low power stations must eliminate the interference or file applications for change in their frequency. Likewise, Section 74.703(b) places responsibility for lower power licensees or permittees to correct, at their own expense, any interference to the direct reception of full service television stations operating on the same or adjacent channels. Pursuant to Section 74.705(a), full service television stations are protected within their Grade B contours. Thus, it is clear that the proposed allotment of Channel 24 to Bellingham can be made consistent with Commission Rules and policies regardless of existing low power stations. Accordingly, it is not necessary to consider McHenry's suggestion that petitioner could select a different site instead of switching channels.

8. As stated in the *Notic e*, the substitution of Channel 64 at Anacortes would move that channel 23.5 kilometers (14.6 miles) closer to Seattle, Washington, and 22.0 kilometers (13.7 miles) closer to Tacoma, Washington. Although the Commission has imposed a freeze on television allotments in certain metropolitan areas, which includes the Seattle-Tacoma area, the Anacortes substitution is not affected by the freeze, as no additional channel is allotted to the freeze area.<sup>1</sup>

9. We believe the public interest would be served by the reallocation of Channel 24 from Anacortes to Bellingham and the reallocation of Channel 64 from Bellingham to Anacortes, as it would permit Station KBCB(TV) to operate at increased power. A staff engineering analysis of the proposal has determined that UHF television Channel 24 can be allotted to Bellingham and Channel 64 to Anacortes in compliance with the Commission's minimum distance separation requirements.<sup>2</sup> We will also modify petitioner's construction permit for Station KBCB(TV) to specify operation on Channel 24 at Bellingham. Since Anacortes and Bellingham are located within 400 kilometers (250 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been obtained.

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **October 8, 1992**, the Television Table of Allotments, Section 73.606(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

City	Channel No.
Anacortes, Washington,	64
Bellingham, Washington	12+, *34, 24

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the television construction permit of Prism Broadcasting Company, Inc. for Station KBCB(TV), Bellingham, Washington, IS MODIFIED to specify operation on Channel 24 in lieu of Channel 64, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KBCB(TV)'s construction permit, BPCT-911104KF, except the channel as specified above. Any other changes, except for those so specified under Section 73.1620 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with construction permit BPCT-911104KF, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

#### FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

<sup>1</sup> See Order, *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, 52 FR 28346, July 29, 1987.

<sup>2</sup> The coordinates for Channel 24 at Bellingham are North

Latitude 4840-48 and West Longitude 122-50-23. The coordinates for Channel 64 at Anacortes are North Latitude 48-30-06 and West Longitude 122-36-36.